

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 147 of 2005

Smt. Viraj Mann @ Babli Mann
W/o late Sri Sudesh Singh
R/o Hariyana Farm
Tehsil Kichha
District U.S. Nagar

...Applicant

Versus

1. State of Uttaranchal
2. Sri R. R. Agarwal
Addl. District Judge, Nainital
3. Sri Virendra Singh
S/o Raghuveer Singh
4. Smt. Shanti Devi
W/o late Sri Raghuveer Singh
Respondent No. 3 & 4 are
R/o Hariyana Farm
Tehsil Kichha
District U.S. Nagar

.....Respondents

Date:- 21st July, 2005

Hon'ble J.C.S. Rawat, J.

1. Heard Sri Rakesh Thapliyal learned Advocate assisted by Lalit Sharma learned counsel for the applicant and Smt. Usha Mann learned counsel for the respondents.

2. The petition under section 482 Cr.P.C. has been filed for quashing the entire proceedings of criminal case No.1579/2003 (State Vs. Smt. Viraj Mann) pending in the court of Chief Judicial Magistrate, Nainital under sections 13, 196, 465, 471, 473 I.P.C.

3. The factual position in a nutshell is that the applicant-Smt. Viraj Mann @ Babli Mann is the widow of late Sri Sudesh Singh, who died on 26.9.1997. After the death of the husband, on 6.11.1997 the applicant preferred an application under section 372 of the Indian Succession Act (for short 'I.S.A.') before the Civil Judge/J.M., Nainital for seeking the succession

certificate in respect of the amount deposited by her husband in the bank. In the said application the applicant also impleaded the brothers of her husband i.e. Mr. Virender Singh & Govind Singh as well as she also impleaded Smt. Shanti Devi- her *mother-in-law*. On the said application, the Civil Judge issued the succession certificate in favour of the present applicant vide order dated 22.3.1998. Thereafter, an application under section 383 of the Indian Succession Act for revocation of the said succession certificate was preferred before the Addl. District Judge, Nainital by the respondent No.3 & 4. who were impleaded by the applicant in the application filed under section 372 I.S.A. It has been alleged in the revocation application that the applicant has obtained succession certificate by using forged signatures in Vakalatnama and forged No Objection Certificate (N.O.C.). The learned Addl. District Judge allowed the application preferred under section 383 I.S.A. and set-aside the judgment and order dated 22.3.1998 by which the succession certificate was issued in favour of the applicant. Thereafter, on 14.7.2003 a complaint was filed by the learned Addl. District Judge, Nainital in pursuance to the observation drawn in the order dated 27.6.2003 whereby the order of succession certificate was set aside. The said complaint was filed under sections 193, 196, 465, 471, 473, I.P.C. and the same was registered as criminal case crime No.1579/2003. On the said complaint, the Chief Judicial Magistrate, Nainital framed the charges against the applicant on 7.8.2004. Feeling aggrieved, the applicant preferred the present petition.

4. The learned counsel for the applicant contended that there is no prima-facie case against the applicant and the Addl. District Judge has not sent the disputed

signature of Govind Singh Made on the vakalatnama to the handwriting expert so as to obtain the opinion as to whether the disputed signatures are forged or not. He should not have recorded the finding without obtaining the report of the handwriting expert that the applicant has obtained the succession certificate by using forged signatures in Vakalatnama and No objection Certificate (N.O.C.). The learned A.G.A. refuted the contention.

5. I would like to mention here that the findings recorded under section 340 Cr.P.C. have not been challenged before appellate court under section 341 Cr.P.C. If the finding of the court below under section 340 has not been challenged, the order has become final. As such, the applicant cannot agitate this point and the correctness of findings cannot be agitated before this Court. The remedy was available to the applicant to file the appeal under section 341. Non-filing of the appeal has two consequences. The order has become final and the order cannot be challenged on the ground that the finding given by the court below is not correct. As such, the same cannot be considered at this stage.

6. The learned counsel for the applicant further contended that offences under section 193, 196, 465, 471 & 473 I.P.C. are not made out, as the alleged false signature has not been sent to the handwriting Expert for examination. The learned counsel for the private respondent refuted the contention and contended that the power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case before

the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}**.

7. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

8. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}**.

9. In view of the aforesaid decisions, I am of view that this Court cannot evaluate the evidence at this stage.

The petition is devoid merit. Therefore, the petition is dismissed.

(J.C.S. Rawat)

Dated 21.7.2005

LSR